

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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C. EARL GRANT

Plaintiff,

vs.

7:07-CV-996  
(TJM/GJD)

NATIONAL BOARD OF MEDICAL EXAMINERS and  
FEDERATION OF STATES MEDICAL BOARD  
Defendants.

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STEFAN D. BERG, ESQ., for Plaintiff

THOMAS S. D'ANTONIO, ESQ. for Defendants

**ORDER**

Presently before this court is a letter motion brought by Attorney Thomas S. D'Antonio on behalf of the defendants. (Dkt. No. 9). Attorney D'Antonio requests that this court vacate a February 14, 2008 order granting plaintiff an extension of time to serve process,<sup>1</sup> and also direct the plaintiff to pay a sanction previously imposed by the Hon. David S. Doty, a United States District Judge in the District of Minnesota.

This court was ***unaware*** of Judge Doty's order when the extension to serve process was granted. Although in his extension request, plaintiff's counsel made passing reference in his letter to "a court order . . . which relates to the instant case," there was no indication of the true import of that order. (Dkt. No. 7). It has now been brought to this court's attention that Judge Doty required that the sanctions he imposed be paid ***prior to "Any new complaint against defendants in this matter [being] served and filed"*** (emphasis added). It is unclear why plaintiff's attorney

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<sup>1</sup> (Dkt. No. 7).

Stefan D. Berg did not alert this court to the true nature of Judge Doty's order prior to requesting an extension of time to serve process. This issue will await further action by defendants which may include a motion to dismiss because of plaintiff's failure to satisfy the condition precedent imposed by the Honorable David S. Doty.

**WHEREFORE** it is hereby

**ORDERED**, that the defendants' letter motion (Dkt. No. 9) is **GRANTED** only insofar as it requests that plaintiff pay the \$3,750.00 sanction imposed by Judge Doty as a precondition to proceeding with this lawsuit, and it is

**ORDERED**, *that plaintiff is directed to pay the \$3,750.00 sanction to the District of Minnesota no later than March 21, 2008*, and it is further

**ORDERED**, that plaintiff file the receipt from the Clerk of the District of Minnesota with this court no later than **Friday, March 28, 2008**; and it is

**ORDERED**, that the issue of whether plaintiff should have filed this case in the Northern District of New York *remains open*, and defendants may raise that issue in a motion to dismiss; and it is

**ORDERED**, no Pre-trial Scheduling Order will be issued in this case, and any deadlines in this case are stayed for thirty (30) days, through and including April 14, 2008, pending plaintiff's payment of the sanctions ordered by the District of Minnesota, and it is further

**ORDERED**, that defendants' letter motion (Dkt. No. 9) is **DENIED AS MOOT** to the extent that asks this court to vacate its February 14, 2008 order.

Date: March 12, 2008

  
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Hon. Gustave J. DiBianco  
U.S. Magistrate Judge